IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 3759 OF 2006

Mr. Tukaram Sopan Undre. ... Applicant.

V/s.

The State of Maharashtra & Ors. ... Respondents.

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Mr. C.N. Chavan i/b. S.B. Deshmukh for the Applicant.
Mr. Nitin Jamdar for Respondent Nos.2 & 3.
Mr. Y.M. Nakhwa, APP for the State.

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CORAM : S.C. DHARMADHIKARI,J.

14TH DECEMBER 2006.

P.C. :

1. The Applicant is the original complainant who has applied for cancellation of bail granted in favour of Respondent Nos.2 and 3 (Original Accused Nos.1 and 2).

2. Respondent Nos.1 and 2 were arrested in connection with C.R.No.87/2006 registered by Loni Kalbhor Police Station. The offences alleged are punishable under Section 302, 301, 30 and 34 of Indian Penal Code.

3. Shri Deshmukh appearing in support of this application raised three fold contentions. His first contention is that the charge-sheet was filed in this case on 19th June 2006. After the charge-sheet was filed, an

application for bail was preferred but the same was rejected by the Trial Court on 21st July 2006. An application for bail was filed in this Court by Respondent Nos.2 and 3 herein. Which application was withdrawn. Thereafter, third bail application has been filed before the Trial Court on 13th September 2006 and the said application has been allowed. He submits that there are no reasons assigned as to why this application is allowed. While it is true that successive applications for bail can be preferred but changed circumstances must be pointed out and when the Trial Court grants bail it must assign cogent and satisfactory reasons for enlarging the Applicant on bail. There is no change in the circumstances. He invites my attention to the orders passed by the Trial Court on both applications. Far from showing any changed circumstances, according to Shri Deshmukh, the Trial Court has reviewed its earlier order which is impermissible in law.

3. The second submission of Shri Deshmukh is that assuming without admitting that application for bail was maintainable and could have been allowed, the learned Judge should have been careful and imposed stringent conditions. The Applicant before this Court and Accused Nos.1 and 2 are brothers. They are related. There are

disputes over land. In such circumstances, there is every likelihood that the prosecution witnesses would be threatened and the evidence tampered.

4. Thus, apart from overlooking the gravity of the offence and the punishment prescribed therefor in law, the learned Judge has exercised the discretionary power casually and mechanically without application of mind.

5. The third and last contention of Shri Deshmukh is that after the application for bail was allowed by the Trial Court, the Accused Nos.1 and 2 have not abided by the condition imposed in as much as they have not attended the concerned Police Station daily as directed. They have only attended once and that is an aspect which is covered by the application for cancellation of bail moved by the State Government. In such circumstances and for all these reasons, the impugned order be set aside.

6. Mr. Deshmukh has relied upon the decision of the Hon'ble Supreme Court reported in Bhagirathsinh s/o Mahipat Singh Jadeja v/s. State of Gujarat in (1984) 1 Supreme Court Cases 284.

7. On the other hand, Shri Jamdar appearing for the Accused Nos.1 and 2 submits that the present application has been filed by the original complainant and not by the State Government. He also submits that earlier application for bail may have been preferred after filing of the charge-sheet but it was a joint application on behalf of all three Accused. The learned Judge observed in the first order that the offence is serious and there are recoveries at the instance of the Applicants. The complainant and the accused are related to each other and therefore, the application deserves to be rejected.

8. According to Shri Jamdar, the second application is only on behalf of Respondent Nos.2 and 3 who are Accused Nos. 1 and 2. The recovery of the axe is at the instance of the Accused No.3 - Ramesh. The recoveries are not at the instance of the Accused Nos.1 and 2. The case is all based on circumstantial evidence. There are civil dispute between parties. In such circumstances, the learned Judge on the second occasion adverted to all materials including the recovery punchanama. When he adopts this approach, it cannot be said that the discretion is exercised arbitrarily and without application of mind.

9. Mr. Jamdar submits that the principles to be applied for cancellation of bail are well settled. However, their applicability differs from case to case. In the present case, it is not as if the exercise of discretion is so arbitrary and pulpably unreasonable that this Court must interfere. He submits that the case is based on circumstantial evidence being not disputed, So also, the fact of recovery at the instance of Accused No.3 then, enlarging the Accused Nos.1 and 2 on bail is something which does not shock the conscience of this Court. He submits that the learned Judge has taken due care and imposed stringent conditions of daily attendance. In such circumstances, this Court should not interfere and the present application be dismissed.

10. The principles upon which the application has to be scrutinized are well settled. This application can be granted if materials are produced to show that the discretion has been exercised arbitrarily and unreasonably so also mechanically and casually. If relevant principles for grant of bail are kept aside completely then this Court must step in. Hence, in addition to going into the post bail conduct and aspects covered thereunder, this Court can also scrutinize the order to find out whether the discretion is abused as indicated above.

11. In the present case, Accused No.1 is a senior citizen. The Accused No.2 is his son. It is clear that the assault took place in the field and the deceased succumbed to the injuries sustained in the same. The recovery punchnama and other documents indicate that the injury is caused by axe. The case has been recovered at the instance of the accused No.3 - Ramesh. Accused Nos.1 and 2 (Respondent Nos.2 and 3) may be present at the site but it is not alleged that they had any weapons with which they assaulted the deceased. Hence, their role was not identical to that of other Accused is the plea which has been accepted relying upon the above material.

12. The joint application which was disposed off earlier should have been considered from this angle. However, it appears that the joint application was disposed of by observing that the accused are guilty of a serious crime. There are recoveries at the instance of all accused. The offence is punishable with life imprisonment and or death. It is serious in nature and therefore, the Court below declined bail although the case is admittedly based on circumstantial evidence.

13. On the second occasion, it appears that the recovery punchnama dated 23rd March 2006 was specifically relied upon. The learned Judge has adverted to the materials forming part of the charge-sheet. While it is true that he should have made a reference to the rejection of the earlier bail application, the reasons assigned therefor so also the matter being carried to this Court, yet, the learned Judge without referring to the details proceeds to hold that the charge is framed and the trial is yet to commence. The case is based on circumstantial evidence and the recovery is only at the instance of accused Ramesh N. Undre. He has a major role in the offence. There is no recovery at the instance of the applications i.e. Accused Nos.1 and 2. The apprehension expressed on behalf of the prosecution of such incident repeating has been taken care of by imposing stringent conditions. The learned Judge ought to have been cautious enough and should have assigned some detailed reasons as to why he was inclined to consider the application preferred before him afresh. Yet, a procedural lapse on his part unless demonstrated to be completely erroneous and totally unjust should not dis-entitle Respondent Nos. 2 and 3 from a discretionary relief. There is, thus, no Arbitrariness or complete lack of application of mind.

14. I have satisfied myself from a perusal of relevant materials and I am of the view that the case of the accused before me can very well be distinguished from that of the Accused No.3. Even the State has not disputed this aspect. It has not moved for cancellation of bail on this ground. In such circumstances and when the trial is likely to commence with further conditions being imposed, the present Application can be disposed of.

15. For the reasons set out above, it is not necessary to cancel the bail in favour of Respondent Nos.2 and 3 on the ground that successive applications preferred by them were devoid of any substance and there are no changed circumstances. The application for cancellation of bail preferred by the State Government is pending in the Sessions Court. However, the learned A.P.P. informs me that the accused are attending and reporting to the Police Station after 19th October 2006 daily. On this ground also, I am not inclined to cancel the bail.

16. The application is, therefore, disposed of and it is directed that the Accused Nos.1 and 2 shall abide by the following conditions in addition to reporting at Loni Kalbhor Police Station :

(i) The order of bail will be given effect only after the applicant furnishes to the investigating officer the details about his place of residence and address where he proposes to stay after he is enlarged on bail. The applicant will not change his residential address thereafter till the conclusion of trial without prior intimation to the Investigation Officer.

(ii) The bail is granted subject to condition that the applicant shall not directly or indirectly, make any inducement or threat to any prosecution witnesses and shall not in any manner tamper with the prosecution evidence.

(iii) The applicant shall cooperate with the learned Trial Judge for expeditious disposal of the case. Any attempt by the applicant to delay the trial may be a ground for cancellation of bail.

(iv) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

(v) Application is disposed of in above terms.

(vi) Parties to act on an authenticated copy of this order.

17. Needless to state that while deciding this application and also granting bail, all observations made either by this Court or the Court below are tentative and prima facie and should not take away the rights of parties to make appropriate submissions during the course of trial. For such, right to be protected and safeguarded, the court below should not guide itself by such tentative and prima facie views and decide the case strictly on its own merit and in accordance with law.

(S.C. Dharmadhikari,J.)